



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2005

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, TX 78283-3966

OR2005-02341

Dear Mr. Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 220132.

The San Antonio Police Department (the "department") received a request for the professional standards files, internal affairs files, and personnel files of four named police officers. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted records include several grand jury summonses. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a district attorney who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury and therefore are not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); but see Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). Thus, these summonses, which we have marked, are apparently held by the department on behalf of the grand jury, and therefore, they are not subject to the Act and need not be disclosed.

We will now consider your argument under section 552.101 of the Government Code for the remaining information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information protected by other statutes. We understand that the City of San Antonio is a civil service city under chapter 143 of the Local Government Code.

Section 143.089 of the Local Government Code contemplates two different types of personnel files, a police officer’s civil service file that a city’s civil service director is required to maintain, and an internal file that a police department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). In cases in which a police department investigates a police officer’s misconduct and takes disciplinary action against a police officer, section 143.089(a)(2) requires the department to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer’s civil service file maintained under section 143.089(a).¹ See *Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* at 122. Such records are not confidential and are subject to release under the Act unless an exception under the Act applies. See *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 948-49 (Tex. App.—Austin 1993, writ denied); see also Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information that reasonably relates to an officer’s employment relationship with the police department and that is maintained in a police department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d at 949.

You state that the submitted information is maintained in the department’s personnel files pursuant to section 143.089(g).² Based on your representations and our review, we find that

¹ Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov’t Code §§ 143.051-.055.

² We note that the submitted documents include information that is required to be placed in the civil service commission’s personnel files under section 143.089(a) of the Local Government Code because it relates to an investigation that resulted in disciplinary action of an officer under by chapter 143, as well as to commendations, congratulations, or honors bestowed on the police officers by a member of the public or by the employing department and a periodic evaluation of a police officer by a supervisor. Furthermore,

the information at issue is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

In summary, the marked grand jury summonses are not subject to the Act. The remaining information is confidential under section 143.089(g) and must be withheld from the requestor under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee. You inform us that you have done so.

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth A. Stephens", written in a cursive style.

Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#220132

Enc. Submitted documents

c: Ms. Roberta Lynn Martin
c/o Robert E. Reyna
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, TX 78283-3966
(w/o enclosures)